viction" so as to include judgment or sentence, This rule of construction has been applied where conviction disqualifies a witness either at common law or by statute, and where a person is disqualified by conviction to hold a seat in the legislature. *Lee* v. *Gansel*, Cowp. 1; *Commonwealth* v. *Gorham*, 99 Mass. 420; *Case of Falmouth*, Mass. Election Cases, 1853 ed., 203. The rule is also invoked where a conviction for violating its conditions forfeits a liquor dealer's license. *Commonwealth* v. *Kiley*, 150 Mass. 325. *Cf. Schiffer* v. *Pruden*, 64 N. Y. 47. Furthermore, it is usually held that no appeal lies from a verdict with sentence suspended, and in New York, at least, it is doubtful whether the governor has power to pardon in such a case. See *People* v. *Markham*, 114 N. Y., App. Div. 387; N. Y. CONST., art. IV., § 5. Hence the result of suspending sentence, a proceeding intended to benefit a defendant, would be to deprive him of a chance to regain rights of citizenship by an appeal or by seeking a pardon. These consequences of the narrow interpretation of "conviction" afford strong reason for presuming that the word was here used in the broader sense.

FEDERAL COURTS — JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP — PRINCIPAL AND SURETY.— A contracted with B to pay the judgment in a suit in a state court by B against C if judgment was rendered against C. The court gave judgment against C. B and C were citizens of the same state, and A was a citizen of another state. A brought a bill in the federal court to have the judgment avoided for fraud, and C was made a defendant to give jurisdiction by diversity of citizenship. *Held*, that the federal court has no jurisdiction. *Steele* v. *Culver*, U. S. Sup. Ct., Oct. 26, 1908.

For the federal courts to have jurisdiction by diversity of citizenship all the parties plaintiff must be citizens of different states from all the parties defendant. *Gage* v. *Riverside Trust Co.*, 156 Fed. 1002. Such jurisdiction is not affected by merely formal or unnecessary parties. *Reese* v. *Zinn*, 103 Fed. 97. But necessary parties must be aligned as plaintiffs or defendants according to their real interests and the facts of the case. *Gage* v. *Riverside Trust Co.*, *supra*. And a party whose real interest places him on one side cannot be transferred to the other in order to give jurisdiction by diversity of citizenship. *Mann* v. *Gaddie*, 158 Fed. 42. And, when a suit is brought by one in a representative or fiduciary capacity, the jurisdiction of the federal courts depends upon his citizenship, and not upon the citizenship of the person represented or interested. *Bonnafee* v. *Williams*, 3 How. (U. S.) 574. It seems settled that, where the action is to have a judgment set aside, the jurisdiction depends on the citizenship of the person against whom the judgment was rendered, and not on the citizenship of the person moving to have it set aside. *King* v. *Davis*, 137 Fed. 198.

INSURANCE — PREMIUMS — RECOVERY BACK BY POLICY HOLDER AFTER POLICY ANNULLED. — During the life of a title insurance policy the insurer went into a receivership, and the policy was annulled. The insured sued for the amount of a premium paid. *Held*, that the company is entitled to deduct the value of insurance given during the time elapsed between the date of the policy and the date of its annulment. *State ex rel. Schaefer* v. *Minn. Tit. Ins. Co.*, 116 N. W. 944 (Minn.).

For a discussion of a policy holder's right to receive premiums paid on a termination of the contract of insurance in the case of life insurance, see 22 HARV. L. REV. 134.

LEGITIMACY — PUTATIVE MARRIAGE. — Parents domiciled in Scotland or Canada went through a marriage ceremony in California, honestly believing in the validity of a divorce which a former husband had obtained in North Dakota upon substantive and jurisdictional grounds not recognized in England, Canada, or Scotland. *Held*, that the parents' mistake having been one of law, not fact, the doctrine of putative marriage does not apply. *Re Stirling*, [1908] 2 Ch. 344. See NOTES, p. 222.

MALICIOUS PROSECUTION — BASIS AND REQUISITES OF ACTION — WRONGFUL INSTITUTION OF PATENT INTERFERENCE PROCEEDINGS. — The defend-

ant maliciously instituted and prosecuted interference proceedings in the patent office, thereby delaying the issuance of a patent to the complainant, the prior applicant. *Held*, that the complainant has no right of action for damages. *Avery & Son* v. *Case Plow Works*, 163 Fed. Rep. 842 (Circ. Ct., E. D. Wis., July, 1908).

In most jurisdictions of the United States an action for the malicious prosecution of a civil action will lie irrespective of arrest, attachment, or special damage. *Closson* v. *Staples*, 42 Vt. 209. *Contra*, *Smith* v. *Michigan Buggy Co.*, 175 Ill. 619. It is universally agreed, however, that the action will lie when there has been special damage other than that involved in defending the suit. See *Smith* v. *Michigan Buggy Co.*, *supra*. As it does not clearly appear that the plaintiff in the principal case alleged that he had been sued without probable cause, the decision may be supported. But assuming such an averment, the plaintiff according to the Vermont decision should have prevailed. And, it is submitted, the same result should follow even under the Illinois rule. For under the patent statutes an unpatented invention vests in the discoverer an inchoate right to its exclusive use. *Evans* v. *Weiss*, 2 Wash. (U. S.) 342. This is a property right which may be sold or assigned. *Burton* v. *Burton Stock Car Co.*, 171 Mass. 437. And the inventor is entitled to perfect the right by patent. *Gayler* v. *Wilder*, 10 How. (U. S.) 477. Therefore the defendant, by delaying the perfection of the plaintiff's right, must necessarily have caused special damage which should entitle the plaintiff to recover.

MORTGAGES — TRANSFER OF RIGHTS AND PROPERTY — SALE BY MORTGAGOR: RELEASE OF PART OF MORTGAGED PREMISES. — A bought part of a mortgaged tract of land. The rest of the land was then sold to B. The mortgagee, without knowledge of the sale to A, released from the mortgage lien the part sold to B. The value of B's land was equal to the amount of the mortgage. A filed a bill in equity praying that his land be released from the mortgage lien. *Held*, that he is not entitled to such relief. *Schofield* v. *Wallace*, 39 Pittsb. Leg. J. 41 (C. P., Allegheny Co., Pa., Aug. 1908).

As between purchasers of parts of mortgaged premises, their holdings are subjected to the satisfaction of the mortgage in the inverse order of their alienation. *Savings Bank* v. *Creswell*, 100 U. S. 630. It follows that if the mortgagee, with knowledge of previous alienations, releases from the mortgage lien portions subsequently alienated, which are of sufficient value to discharge the mortgage debt, those previously alienated are released from the mortgage lien. *Schrack* v. *Schriner*, 100 Pa. 451. But this rule of charging the lands in the inverse order of their alienation is a rule of equity, and as such should not be applied when it would cause hardship. It is not fair to put upon the mortgagee the duty of keeping himself informed of all conveyances of portions of the land and of the resulting equities claimed by the owners. But any alienee, who intends to claim an equity, should see to it that the mortgagee has notice of the alienation. *Stuyvesant* v. *Howe*, 1 Sandf. Ch. (N. Y.) 419. The plaintiff in the present case not having given such notice was rightly denied equitable relief.

POLICE POWER — REGULATION OF BUSINESS AND OCCUPATIONS — REQUIREMENT OF BANK DEPOSITORS' GUARANTY FUND. — A statute, passed after the incorporation of the plaintiff, provided that every state bank should pay an annual assessment equal to 1 % of its deposits for the purpose of creating a common guaranty fund for depositors. *Held*, that the statute is constitutional. *Noble State Bank* v. *Haskell*, 97 Pac. 590 (Okla.).

The statute does not impair the obligation of contracts, for before incorporating the bank the legislature had reserved the right to alter all corporate charters. Wilson, Rev. & Ann. St. Okla., 1903, c. 18, § 3; Okla. Const., Art. IX. § 47. See *Railroad Co.* v. *Maine*, 96 U. S. 499. Even without such reservation, a reasonable exercise of the police power does not come within the inhibition against impairing the obligation of contracts or conflict with other constitutional provisions. *Cummings* v. *Spaunhorst*, 5 Mo. App. 21. The nature of banking makes it especially a subject for regulation by the police power. Thus,